

RECORD OF PROCEEDINGS
AIR FORCE BOARD FOR CORRECTION OF MILITARY RECORDS

IN THE MATTER OF:

DOCKET NUMBER: 97-00860

COUNSEL: [REDACTED]

OCT 14 1997

HEARING DESIRED: Yes

APPLICANT REQUESTS THAT:

The Officer Performance Report (OPR) rendered for the period 27 Mar 92 through 26 Mar 93 be declared void and replaced with a reaccomplished report covering the same period.

APPLICANT CONTENDS THAT:

The contested OPR does not reflect an accurate assessment of his duties, accomplishments, and performance during the contested period.

In support of his appeal, the applicant provided statements from the rating chain and documentation relating to his appeal.

Applicant's complete submission is attached at Exhibit A.

STATEMENT OF FACTS:

The applicant's Total Active Federal Military Service Date (TAFMSD) is 19 Aug 79. He is currently serving on extended active duty in the grade of major, effective, and with a date of rank (DOR) of 1 Dec 90.

Applicant's OER/OPR profile since 1985 follows:

<u>PERIOD ENDING</u>	<u>OVERALL EVALUATION</u>
24 Aug 85	1-1-1
14 Apr 86	1-1-1
20 Feb 87	1-1-1
20 Feb 88	1-1-1
1 Nov 88	Meets Standards
1 Nov 89	Meets Standards
20 Jun 90	Meets Standards
20 Jun 91	Meets Standards
26 Mar 92	Meets Standards

* 26 Mar 93	Meets Standards
26 Mar 94	Meets Standards
26 Mar 95	Meets Standards
26 Dec 95	Meets Standards

* Contested report.

Applicant submitted similar appeals under AFI 36-2401, Correcting Officer and Enlisted Evaluation Reports, which were denied by the Evaluation Report Appeal Board (ERAB) on 17 Oct 95 and 6 Feb 96, respectively.

AIR FORCE EVALUATION:

The Chief, Appeals & SSB Branch, AFPC/DPPPA, reviewed this application and indicated that previous and subsequent OPRs are not germane to this case. As it is accepted that performance and potential can change over time, evaluation reports are specifically designed to be the rating chain's most accurate assessment of a ratee's performance for a designated rating period. Air Force policy is that evaluation reports are accurate as written when they become a matter of record and it takes substantial evidence to the contrary to have reports changed or voided. To effectively challenge OPRs, it is important to hear from all the evaluators from the reports—not only for support, but for clarification/explanation. In this case, the applicant provides letters from the evaluators on the contested report. It is very important to note, however, that evaluator willingness to change a performance report is not, by itself, a valid reason for doing so. To warrant replacement of an OPR, the applicant must prove the original report contained factual error or was the product of injustice (impropriety). To be clear, replacing accurate information with alternative, more specific, or more eloquent statements is not considered a correction of error. Any evaluation report can be rewritten to be more hard-hitting, but this is not the purpose of the appeals process.

DPPPA further indicated that while the applicant and his support state the revised reports contains more accurate information describing the applicant's duties, they do not attempt to explain the other additions to the report. To more clearly demonstrate this point, they provide the following examples of unexplained additions to the contested OPR. DPPPA does not believe the additions to be an attempt to correct an error, but rather, an attempt to rewrite the applicant's report for the purpose of promotion reconsideration. The rater's statement, "...this request has no relation to (applicant's) selection to Lt Col," is not convincing. The applicant states this appeal is the result of a "records review" he requested following nonselection for promotion by the CY94A board, which purportedly identified the contested report as a "weak spot" in his record. Furthermore, if

the rater's statement was accurate, all requested corrections to the contested OPR would be concrete, factual, or quantifiable revisions/additions. This is not the case. Statements added/revised in the applicant's reaccomplished report that do not have anything to do with the proposed duty related "omissions" and/or "mis-statements" include:

"A super star! Rock solid under pressure...ACC's number one...Best in the branch, top 10% performer overall! He is ready for command now!...Definitely send to SSS...Exceptional officer and brilliant leader!...He takes the initiative and gets results! Absolutely a top performer! Definitely challenge with operational leadership and send to SSS!"

The above mentioned changes to the contested report are not unique corrections to erroneous information. While the applicant and his support cite specific "facts" they believe must be added to the contested report, DPPPA finds that in the process of adding the "facts" they have also completely rewritten large portions of the OPR. The proposed report does not resemble the original. By signing the original report, the evaluators were stating, unequivocally, they were satisfied with the OPR and in no need of further "exchange of normal rater to ratee information," as stated in the rater's 17 Dec 96 letter. DPPPA states that there is no regulatory requirement for communication between ratees and their evaluators. The evaluators signed the original report indicating it was accurate, and then signed the letters (two years later) expressing their desire to revise the report.

DPPPA further stated that the applicant and his support state HQ AFPC's assessment of his previous appeal is invalid. They state, "(HQ AFPC) comments may apply in a perfect world free from operational taskings, interference, and unforeseen circumstances. However, second guessing how the contested OPR should have been written and personal criticisms do not change the fact that two of applicant's accomplishments were inadvertently omitted and so the contested OPR should be corrected in accordance with Air Force regulations." DPPPA believes the inconsistency between this statement and the requested changes is self-explanatory. Nowhere in Air Force regulations does it state a report is invalid because an evaluator "inadvertently forgot" to write "A super star!" In the rater's 17 Dec 96 letter (paragraph 4), he states his intention to use "stronger language." The contention that a busy operational schedule, temporary duty (TDY) assignments, and/or geographical separation, makes it more difficult or time-consuming to use "strong language" is unfounded. They find no evidence that it took longer to write the requested replacement report than it did to write the original.

Furthermore, the applicant's claim in paragraph 15 of his DD Form 149 continuation sheet that "AFPC/DPPPA does not fully appreciate

the position of my rating chain concerning this OPR appeal...AFPC/DPPPA is not familiar with the unusual circumstances surrounding the writing of the contested OPR" is without foundation. This appeal is not remotely confusing or unusual. DPPPA's recommendation of denial in this case is directly supported by the governing regulation, which requires not only the support of evaluators for revising an OPR, but also solid rationale, which is lacking in this appeal package. The evaluators claim they were too busy, too far away, unaware of the applicant's accomplishments, and hampered in their ability to communicate with the applicant. Again, the specific verbiage of the requested changes does not correspond to the rationale provided for them. DPPPA strongly recommends denial of the applicant's request to replace the 26 Mar 93 OPR. They do not believe there is correction necessary to the applicant's record in relation to this appeal and SSB consideration is not warranted.

A complete copy of the Air Force evaluation is attached at Exhibit C.

APPLICANT'S REVIEW OF AIR FORCE EVALUATION:

Counsel for the applicant reviewed the Air Force evaluation and stated, in part, that the issue before the Board is whether an injustice occurred because of the negligent omission of significant facts relevant to applicant's duties during the questioned rating period. The rater has stated in three letters that he was not aware of all of applicant's achievements at the time he wrote the OPR. The additional rater was also unaware of the omitted accomplishments. The evidence well documents how two of the applicant's most important accomplishments during the rating period were omitted and the omission was negligent and the remedy for negligence is to put the injured person back in the position he would have been had there been no negligence. The only way to do this is to replace applicant's contested OPR with the corrected OPR.

Counsel also provided a five-page rebuttal statement from the applicant.

Counsel's complete response, with attachments, is attached at Exhibit E.

THE BOARD CONCLUDES THAT:

1. The applicant has exhausted all remedies provided by existing law or regulations.

2. The application was timely filed.

3. Insufficient relevant evidence has been presented to demonstrate the existence of probable error or injustice. We have thoroughly reviewed the documentation submitted with this appeal, including the supporting statements from the rating chain; however, we are not persuaded that the contested report should be declared void and replaced with a reaccomplished report. While the applicant's contentions are duly noted, we do not find these assertions sufficiently persuasive to override the rationale provided by the Air Force. In regard to the comments provided by the rating chain, we have adopted the rationale provided by the Air Force in that a report is considered accurate as written when it becomes a matter of record. While the rater and additional rater indicate that they did not realize that the applicant's accomplishments during the reporting period were not completely documented, none of the statements provided for our review is sufficiently persuasive to demonstrate that the report in question is flawed or that the assessments of the applicant's performance were erroneous at the time they were rendered. In addition, we note, and as stated by the Air Force, the rater and additional rater did not explain the other additions to the reaccomplished report nor provide stronger rationale for the reasons they believe the report should be replaced. Furthermore, we note that the reviewer concurred with the rater and additional rater's recommendations to replace the contested report but did not indicate he made an error or there was an oversight on his part. Therefore, should the applicant provide a statement from the reviewer indicating that an error was made, the Board would be willing to reconsider this application. However, absent evidence to the contrary, we agree with the recommendation of the Air Force and adopt the rationale expressed as the basis for our decision that the applicant has failed to sustain his burden that he has suffered either an error or an injustice and we find no basis upon which to recommend granting the relief sought.

4. The documentation provided with this case was sufficient to give the Board a clear understanding of the issues involved and a personal appearance, with or without counsel, would not have materially added to that understanding. Therefore, the request for a hearing is not favorably considered.

THE BOARD DETERMINES THAT:

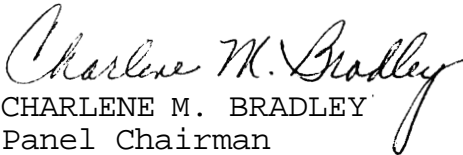
The applicant be notified that the evidence presented did not demonstrate the existence of probable material error or injustice; that the application was denied without a personal appearance; and that the application will only be reconsidered upon the submission of newly discovered relevant evidence not considered with this application.

The following members of the Board considered this application in Executive Session on 18 September 1997, under the provisions of Air Force Instruction 36-2603:

Ms. Charlene M. Bradley, Panel Chairman
Mr. Robert W. Zook, Member
Mr. Jackson A. Hauslein, Member
Mrs. Joyce Earley, Examiner (without vote)

The following documentary evidence was considered:

Exhibit A. DD Form 149, dated 27 Dec 96, w/atchs.
Exhibit B. Applicant's Master Personnel Records.
Exhibit C. Letter, AFPC/DPPPA, dated 26 Mar 97.
Exhibit D. Letter, AFBCMR, dated 14 Apr 97.
Exhibit E. Letter fr counsel, dated 12 May 97, w/atchs.


CHARLENE M. BRADLEY
Panel Chairman

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